

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FREDERIC LEPPER
Petitioner,

V.

LOIS RUSSO,
Respondent.

Civil Action No. 04-11879-MLW

ANSWER

The respondent, Lois Russo, Superintendent of Souza-Baronowski Correctional Center, answers the numbered paragraphs of the above-captioned petition for writ of habeas corpus as follows:

1-2. Admitted.

3. **Admitted.** And further answering, the petitioner was also sentenced to one year in the House of Correction for home contractor fraud to be served concurrently with the larceny sentences.

4-8. Admitted.

9(a)-(c). Admitted.

9(d). The grounds raised by the petitioner in his direct appeal are contained in his brief to the Massachusetts Appeals Court which is included in the Supplemental Answer. The document speaks for itself. (See Supp. Ans. Exh. 1 at 1-2).

9(e)(1)-(3). Admitted.

10. Admitted.

11(a)(1)-(2). Admitted.

11(a)(3). The grounds raised by the petitioner in his motion for a new trial are contained in the Record Appendix to his brief to the Massachusetts Appeals Court which is included in the Supplemental Answer. The document speaks for itself. (See Supp. Ans. Exh. 2 at 94-99).

- 11(a)(4)-(6). Admitted.
- 11(c). Admitted.
- 12A-12D. These paragraphs contain conclusions of law requiring no response. To the extent that the petitioner presents facts, they are denied.
- 14-16. Admitted.
17. The respondent is without knowledge or information sufficient to form a belief as to the truth of these paragraphs.

Answering further, the respondent has exhausted state remedies on the claims presented. Also, pursuant to Rule 5 of the Rules Governing 28 U.S.C. § 2254 cases, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

1. Brief for the Defendant on Appeal on Appeal to the Massachusetts Appeals Court (01-P-0723)
2. Record Appendix for the Defendant on Appeal on Appeal to the Massachusetts Appeals Court (01-P-0723)
3. Brief for the Commonwealth of Massachusetts on Appeal to the Massachusetts Appeals Court (01-P-0723)
4. *Commonwealth v. Lepper*, 60 Mass. App. Ct. 36, 798 N.E. 2d 1030 (2003).
5. Application for Leave to Obtain Further Appellate Review in Supreme Judicial Court (FAR-13834).
6. Notice of Denial of F.A.R. Application Dated January 29, 2004.
7. Trial Transcripts in *Commonwealth v. Frederic Lepper* before Donohue, J. and a jury, Worcester Superior Court September 9-15, 1999 (Six Volumes):

September 9- Tr. I - Morning
September 9- Tr. I - Afternoon

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September 10-Tr. II
September 13-Tr. III
September 14-Tr. IV
September 15-Tr. V

DEFENSES

1. The state court adjudication of the petitioner's claims was not contrary to nor an unreasonable application of clearly established Supreme Court law.

2. The petition fails to state a claim upon which federal habeas corpus relief can be granted pursuant to 28 U.S.C. § 2254.

Respectfully submitted,

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